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IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

THE COUNTY OF JEFFERSON, MISSOURI

% Ms. Beth Mahn, Collector Jefferson County Administration Center

Center 729 Maple Street Hillsboro, MO 63050

Plaintiff,

 \mathbf{v}_{ullet}

TYLER TECHNOLOGIES, INC.

Serve: Registered Agent

Capital Corporate Services, Inc. 222 E. Dunklin, Suite 102
Jefferson City, MO 65101

Defendant.

Case No. 4:09-CV-554-SNLJ

Jury Trial Demanded

DEFENDANT TYLER TECHNOLOGIES, INC.'S SURREPLY TO PLAINTIFF'S REPLY MEMORANDUM IN SUPPORT OF MOTION TO REMAND

Defendant Tyler Technologies, Inc. ("Tyler") files this Surreply to Plaintiff's Reply Memorandum in Support of Motion to Remand (the "Reply") and in support thereof states as follows:

Tyler has stated its position with respect to the forum selection clause at issue in this case and has provided the Court with the necessary factual and legal authority in support thereof. Tyler will not rehash those arguments here. However, Plaintiff, in its Reply has made a misstatement of fact that is false and patently misleading. On page 3 of its Reply, Plaintiff states that "*The parties specifically negotiated this provision* [Article 13] which would allow either party, as plaintiff, to choose the Missouri Court of Jefferson County, or this Federal Court, as a

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proper venue for instituting suit. . ." (Pl.'s Reply p. 3) (emphasis added). As can be seen from

the attached affidavit of an individual who actually negotiated the contracts at issue, the parties

did not specifically negotiate this provision. See Affidavit of John R. Baker attached hereto as

Exhibit A (hereinafter "Baker Affidavit"). Rather, Article 13 is a standard provision that was

drafted by Tyler and is included as a matter of course in its contracts. (Baker Affidavit ¶ 6)

Neither Tyler nor the County specifically negotiated or bargained for any of the language found

in Article 13. *Id.* To state that the parties "specifically negotiated this provision" and to further

suggest that they "intended" for the plaintiff to have the sole choice between state or federal

court in Missouri is a misstatement of fact with absolutely no factual support and is misleading.

For the reasons stated in Tyler's Notice of Removal and Response, Tyler respectfully

requests that Plaintiff's Motion to Remand be denied.

Dated: May 27, 2009

Respectfully Submitted,

/s/ Andrew B. Russell

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DEFENDANT'S SURREPLY TO PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO REMAND - 2 -

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ATTORNEYS FOR DEFENDANT TYLER TECHNOLOGIES, INC.

CERTIFICATE OF SERVICE

I certify that the foregoing instrument was served upon all counsel of record by the Court's electronic filing system on May 27, 2009.

/s/ Andrew B. Russell